

1 KAMALA D. HARRIS.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 **DMITRIY ALEKSANDR TRETIK**
14 769 E. Olive Avenue
Burbank, CA 91501

15 Registered Nurse Applicant

16 Respondent.

Case No. 2011-629

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about February 26, 2010, the Board of Registered Nursing (Board) received an
24 application for Licensure by Examination as a Registered Nurse from Dmitriy Aleksandr Tretiak
25 (Respondent). On or about February 19, 2010, Dmitriy Aleksandr Tretiak certified under penalty
26 of perjury to the truthfulness of all statements, answers, and representations in the application.

27 The Board denied the application on June 16, 2010.

28 ///

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

“(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

“(3) (A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.”

5. Section 490 states, in pertinent part:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

“(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.”

9 6. Section 2736 provides, in pertinent part, that the Board may deny a license when it
10 finds that the applicant has committed any acts constituting grounds for denial of licensure under
11 section 480.

12 7. Section 2761 states, in pertinent part:

13 “The board may take disciplinary action against a certified or licensed nurse or deny an
14 application for a certificate or license for any of the following:

15 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

16

17 “(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
19 Act] or regulations adopted pursuant to it.

20

21 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
22 functions, and duties of a registered nurse, in which event the record of the conviction shall be
23 conclusive evidence thereof.”

24 8. Section 2762 states, in pertinent part:

25 “In addition to other acts constituting unprofessional conduct within the meaning of this
26 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
27 chapter to do any of the following:

28

1 “(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.”

6 **REGULATORY PROVISIONS**

7 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

8 “A conviction or act shall be considered to be substantially related to the qualifications,
9 functions or duties of a registered nurse if to a substantial degree it evidences the present or
10 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
11 safety, or welfare.”

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(Conviction of a Substantially-Related Crime)**

14 10. Respondent’s application is subject to denial under sections 2736, 2761, subdivisions
15 (a) and (f), and sections 2762 and 480, subdivisions (a)(1) and (a)(3)(B), and section 490, in
16 conjunction with California Code of Regulations, title 16, section 1444, in that Respondent was
17 convicted of a crime substantially related to the qualifications, functions or duties of a registered
18 nurse, as follows:

19 a. On or about May 14, 2010, after pleading *nolo contendere*, Respondent was
20 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
21 [driving while having a 0.8% or higher blood alcohol content], in the criminal proceeding entitled
22 *The People of the State of California v. Dmitriy Aleksandr Tretyak* (Super. Ct. Los Angeles
23 County, 2010, No. OBR01304). The Respondent was placed on probation for a period of 36
24 months, and fined. The circumstances surrounding the conviction are that on or about April 14,
25 2010, during a traffic enforcement stop, Respondent was found to be driving a vehicle, while
26 having a 0.08% and more, by weight, of alcohol in his blood, which was in fact a .25% by weight,
27 of alcohol in his blood. Respondent was convicted of violating Vehicle Code section 23152,
28 subdivision (b) [driving while having a 0.8% or higher blood alcohol content.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Dangerous Use of Alcohol)**

3 11. Respondent's application is subject to denial under sections 2762, subdivision (b), in
4 that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to
5 himself, and the public when he drove a vehicle, while having a 0.08% and more, by weight, of
6 alcohol in his blood, which was in fact a .25% by weight, of alcohol in his blood. Complainant
7 refers to, and by this incorporates, the allegations set forth above in paragraph 10, subparagraph
8 (a), as though set forth fully.

9 **THIRD CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction Involving the Consumption of Alcohol)**

11 12. Respondent's application is subject to denial under sections 2761, subdivisions (a)
12 and (f), as defined in section 2762, subdivision (b), in that Respondent was convicted of a crime
13 involving the consumption of alcohol. Complainant refers to, and by this incorporates, the
14 allegations set forth above in paragraph 10, subparagraph (a), as though set forth fully.

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 **(An Act Warranting Denial of Licensure)**

17 13. Respondent's application is subject to denial under sections 2736 and 480,
18 subdivision (a)(3)(A) and (B), in that Respondent committed an act which if done by a licentiate
19 would be grounds for suspension or revocation of his license. Complainant refers to, and by this
20 incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as though set forth
21 fully.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying Dmitriy Aleksandr Tretiak's application for Licensure by Examination, as a Registered Nurse; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 1-13-2011

Stacie Bern
for

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2010600632
statement of issues.rtf
9/29/10-IC